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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : RICCI et al.  
Serial No : 10/581,964  
Confirm. No : 7292  
Filed : June 7, 2006  
For : DEVICE FOR PERFORMING...  
Art Unit : 1797  
Examiner : SAKELARIS, SALLY A  
Dated : November 16, 2010

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REPLY BRIEF

In response to the Examiner's Answer of September 27, 2010 Appellant hereby replies.

Withdrawn Rejections

Applicant notes that the grounds of rejection have been withdrawn by the Examiner with respect to claims 8-11, 13-15, 31 and 47. It is believed that claims 8-11, 13-15, 31 and 47 would be allowable if rewritten in independent form and to include the features of any intervening claims as discussed with the Examiner and one of Applicant's representatives, Brian M. Duncan, in a telephone conversation of August 17, 2010.

CLAIM 1

The Examiner's Answer takes the position that the argued limitations of a control unit determining the erythrocyte sedimentation rate of the fluids based on the levels of the fluid detected by the two detectors is not positively recited structure in the claims. Appellant respectfully disagrees with this position as claim 1 clearly recites a structure, i.e. a control unit, that relates to control features for determining an erythrocyte sedimentation rate based on detected biological fluid levels. Claim 1 certainly does not include intended use features, but rather provides for positively recited structure, which should be given patentable weight as the control features are a clear limitation of the recited combination.

The Examiner's Answer states that even if full patentable weight is given to the control features, Skotnikov et al. discloses a schematic representation of an automated work station 10 that is capable of detecting biological fluid levels in test tubes determining an erythrocyte sedimentation rate based on the levels of the biological fluids detected in the test tubes. The Examiner's Answer then provides the following statements to support the position that Skotnikov et al. discloses a control unit that determines an erythrocyte sedimentation rate based on detected biological fluid levels in tests as claimed:

*Automated work station 10 includes sample preparation station (or line) 12 and a plurality of test stations, or testing lines A, B, C, D, F, G, H and J each with various detectors (i.e., meeting the limitation of at least one and two detectors). Test station A determines soil acidity, test station B determines soil*

*carbon content, test station C is used to prepare a soil extract which is eventually provided to ion-selective flow sensors for the determination of nutrients and micronutrients in the sample, test station F determines alkali soluble fraction of organic matters, test station G is used to determine organic matter, test station H is used to determine sesquioxides, and test station J is used to determine dust, sand and physical clay in the sample. Various detectors (i.e., sensors) in the testing lines are coupled to controller interface 14 which is, in turn, coupled to controller 16. (Emphasis added)*

Determining soil acidity, soil carbon content, preparing a soil extract, determining alkali soluble fraction of organic matters, determining organic matter, determining sesquioxides and determining dust, sand and physical clay in a sample does not provide any teaching or suggestion for detecting a level of biological fluid in test tubes and using the detected biological fluid levels to determine an erythrocyte sedimentation rate as featured in the present invention. An anticipation rejection under 35 U.S.C. 102(b) requires that a reference teach or suggest each and every feature of the claimed combination. Skotnikov et al. fails to anticipate each and every feature of the present invention as Skotnikov et al. does not teach or suggest detecting a level of biological fluid in test tubes at any of the stations A, B, C, D, F, G, H and J wherein a control unit that determines an erythrocyte sedimentation rate based on the detected levels of biological fluid in the test tubes as claimed. Skotnikov et al. merely discloses an arrangement for analyzing soil to determine the contents and properties of the soil, which does not provide any teaching or suggestion for determining an erythrocyte sedimentation rate as

featured in the present invention. There is simply no teaching or suggestion for a control unit that determines an erythrocyte sedimentation rate based on biological fluid levels detected by a first detector and a second detector as featured in the recited combination. As such, the prior art as a whole does not anticipate the device as claimed in claim 1 as Skotnikov et al. does not teach or suggest each and every feature of claim 1.

## CLAIM 2

The Examiner's Answers takes the position that Skotnikov et al. discloses agitator devices that oscillate holders for test tubes such that fluid is stirred since Skotnikov et al. discloses that agitator 40 is placed relative to conveyor (36) to agitate the contents of vessel 32 at position 5, 11 and 17. However, the mere fact that Skotnikov et al. discloses that the contents of the vessel 32 are agitated does not provide any teaching or suggestion for oscillating the holders of the test tube, particularly in view of the fact that Skotnikov et al. clearly discloses that stirrer 100 is inserted into the contents of the vessel to stir the contents held therein. Skotnikov et al. provides no teaching or suggestion for oscillating, i.e. moving back and forth, the holders for test tubes in order to stir a biological fluid contained therein. A reference must provide disclose each and every feature of the claimed combination in an anticipation rejection under 35 U.S.C. 102(b). No such teaching or suggestion exists in Skotnikov et al. for oscillating holders for test tubes as featured in the present invention. As such, the prior art as a whole does not anticipate the device as claimed in claim 2 as Skotnikov et al. does not teach or suggest each and every feature of claim 2.

### CLAIM 3

The Examiner's Answer takes the position that calorimeter 78 of Skotnikov et al. is appropriately construed as a first or second detector as featured in the present invention because the calorimeter 78 is capable of minimally detecting the levels inside test tubes as required in the claimed combination. The Examiner's Answer further states that the calorimeter determines the level of organic matter content, which is interpreted as the calorimeter being capable of detecting a level of a biological fluid. Appellant respectfully disagrees with the interpretation of the calorimeter 78 of Skotnikov et al. being the equivalent of the first or second detector of the present invention. The calorimeter 78 of Skotnikov et al. does not detect a level of biological fluid in test tubes as suggested in the Examiner's Answer. Skotnikov et al. clearly discloses that the calorimeter 78 measures the heat created during a reaction, which has nothing to do with determining a level of biological fluid as featured in the present invention. Even assuming that the calorimeter 78 of Skotnikov et al. could somehow be construed as a first or second detector as featured in the present invention, there is no teaching or suggestion in Skotnikov et al. for a control unit that determines an erythrocyte sedimentation rate as claimed. As such, the prior art as a whole does not anticipate the device as claimed in claim 3 as Skotnikov et al. does not teach or suggest each and every feature of claim 3.

### CLAIM 7

The Examiner's Answer takes the position that sprockets 140 of Skotnikov et al. are

capable of rotating a holder about a horizontal axis parallel to a traveling direction of a conveyor. No such teaching or suggestion exists in Skotnikov et al. for the sprocket 140 rotating holders for test tubes about a horizontal axis that is parallel to a traveling direction of a flexible moving member as claimed. Skotnikov et al. merely discloses that the sprocket 140 guides the conveyor belt 36. This does not provide any teaching or suggestion for rotating the vessels 32 as featured in the present invention.

The Examiner's Answer also takes the position that Skotnikov et al. discloses agitator devices 40, 50 that rotate holders for test tubes such that fluid is stirred. However, Skotnikov et al. only discloses that the agitator devices 40, 50 are placed relative to conveyor (36) to agitate the contents of vessel 32 at position 5, 11 and 17. This does not provide any teaching or suggestion as to rotating the vessels 32 via a flexible member as featured in the present invention. As such, the prior art as a whole does not anticipate the device as claimed in claim 7 as Skotnikov et al. does not teach or suggest each and every feature of claim 7.

#### CLAIM 16

The Examiner's Answer takes the position that Skotnikov et al. teaches at least two detectors that are capable of detecting levels of organic matter, soil acidity, carbon content and alkali soluble fraction and therefore the detectors of Skotnikov et al. are capable of detecting levels of biological fluid as featured in the present invention. An anticipation rejection under 35 U.S.C. 102(b) requires that a reference teach or suggest each and every feature of the claimed invention. No such teaching or suggestion exists in Skotnikov et al. for two detectors

that detect levels of biological fluid in test tubes as claimed. Skotnikov et al. merely discloses detectors that measure characteristics of soil to determine the contents of the soil. This does not provide any teaching or suggestion that would direct a person of ordinary skill in the art toward detectors that measure a level of biological fluids in test tubes as featured in the present invention. Even assuming that the detectors of Skotnikov et al. could somehow be construed to be the equivalent of the detectors of the present invention, Skotnikov et al. does not teach and does not suggest the combination of a control unit that determines an erythrocyte sedimentation rate based on detected biological fluid levels in test tubes as claimed. As such, the prior art as a whole does not anticipate the device as claimed in claim 16 as Skotnikov et al. does not teach or suggest each and every feature of claim 16.

#### CLAIM 27

The Examiner's Answer takes the position that Column 3, lines 45-52 of Skotnikov et al. somehow teaches a reading station that reads labels that are attached to test tubes as featured in the present invention. Column 3, lines 45-52 of Skotnikov et al. only discloses that the soil samples are provided in a humidity meter 28 long enough for a controller to take a number of humidity measurements. There is no teaching and no suggestion in Column 3, lines 45-52 of Skotnikov et al. for providing the vessels 32 with labels and reading the labels as featured in claim 27. The labels of the present invention allow the reading station to determine which test tubes must undergo a measurement of the sedimentation rate of the sample contained in the test tubes. This advantageously increases manufacturing efficiency since the device only measures

test tubes that need to be measured. Skotnikov et al. fails to teach or suggest such testing efficiency advantages since Skotnikov et al. is void of any teaching or suggestion for labels that are attached to test tubes wherein the labels are read at a reading station as claimed. As such, the prior art as a whole does not anticipate the device as claimed in claim 27 as Skotnikov et al. does not teach or suggest each and every feature of claim 27.

### Conclusion

The invention as claimed presents a combination of features which is neither taught nor suggested by the prior art. The claimed invention should be considered patentable and not anticipated by the cited prior art references. Accordingly, it is requested that the rejections of the claims be reversed.

As to the other points raised in the Examiner's Answer these are already addressed in Appellant's Appeal Brief of July 19, 2010.

For all the above reasons and those stated in Appellant's Appeal Brief, the Board is respectfully requested to overturn the rejections in the last Office Action.

Respectfully submitted  
for Applicant,

A handwritten signature in black ink, appearing to read 'J. McGlew', with a stylized flourish extending to the right.

By: \_\_\_\_\_  
John James McGlew  
Registration No. 31,903  
McGLEW AND TUTTLE, P.C.



- and -



By: \_\_\_\_\_  
Brian M. Duncan  
Registration No. 58,505  
McGLEW AND TUTTLE, P.C.

JJM:BMD  
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DATED: November 16, 2010  
BOX 9227 SCARBOROUGH STATION  
SCARBOROUGH, NEW YORK 10510-9227  
(914) 941-5600

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